IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 21289 of 1994

Between:

Samadhi Kousalyamma, W/o. Raghu Ramaiah.
R/o. Gannangi Dibba, Yakasiri,
Chittamur Mandal, Nellore district **..... PETITIONER**

AND

1 The Joint Collector, Nellore, Nellore district
2 The Mandal Revenue Officer, Chittamur Mandal, Nellore district

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the order of the Joint Collector, Nellore the 1st respondent herein in D.Dis.No. (B2) 1130/93 dated 30/10/1994 directing eviction of the petitioner from the land of an extent of Ac.1-98 cents in S.No.28/7 of Gannangi Dibba, H/o. Yakasiri, Chittamuru Mandal, Nellore District and the consequential notice dated 11/11/1994 issued by the 2nd respondent as arbitrary, illegal, without jurisdiction and void.

Counsel for the Petitioner: MR.M.P.CHANDRAMOULI

Counsel for the Respondents : G.P. for Revenue

The Court made the following :

O R D E R :

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Heard both sides.

The petitioner herein, who claims a rythwari patta in respect of land in survey no.28/7 in an extent of Ac.1.98 cents, situated in Yakasiri village, Chittamur mandal, Nellore district, filed this Writ Petition, inter alia, challenging the notice order of the first respondent in D.Dis.No. (B2) 1130/93, dated 30.10.1994 directing her eviction from the above land and the notice issued by the second respondent dated 11.11.1994.

The case of the petitioner in brief is that she has been in possession and enjoyment of the said land all along in her own right and the first respondent has, without giving any prior notice and opportunity, passed the impugned order dated 30.10.1994 asking the petitioner to vacate from the said land, and consequent thereto, the second respondent issued the impugned notice dated 11.1.1994. Hence, the Writ Petition.

In the counter affidavit filed by the respondents herein, it is pointed out that in view of the certain allegations brought to the notice in regard to irregular rythwari pattas of the government A.W.D. lands, enquiry was conducted and ultimately the impugned notice was given under Section 7 of the Land Encroachment Act, asking the petitioner to vacate the said premises. It was also pointed out that the petitioner had in fact filed a civil Suit in O.S.No.83 of 1994 on the file of the Sub Court, Gudur, to which government is not a party, and obtained interim injunction in I.A.No.555 of 1994 on 30.8.1994. In view of the same, the petitioner is not entitled to any indulgence of this Court.

Having heard the learned counsel on either side and on perusal of material on record, it is seen that in the impugned notice dated 11.11.1994 issued by the second respondent asking the petitioner to

vacate the premises, there is no specific allegation made against the petitioner as to why she is not entitled to the said land nor does it show any valid reasons for such action. It only refers to certain order dated 30.10.1994 passed by the first respondent.

It is pointed out by the learned counsel appearing on behalf of the petitioner that after receipt of the said notice dated 11.11.1994 from the second respondent, the petitioner applied for the copy of the said order of the first respondent dated 30.10.1994, whereupon the first respondent issued a report in F.dis.No.11/1994, dated 15.12.1994 to the effect that the petitioner's application was not considered as the documents for which certified copy was filed, does not relate to her and therefore, the copy stamps along with the application are returned.

It is the further case of the petitioner that she is not aware of any such orders passed on 30.10.1994 by the first respondent herein nor there was any notice or opportunity given to her before passing the said orders. Therefore, in its entirety both - order dated 30.10.1994 of the first respondent and notice dated 11.11.1994 of the second respondent, are in the teeth of basic principles of natural justice. Further, having regard to the rythwari patta held by the petitioner, question of treating the land as that of the government land, does not arise and the same is not sustainable.

Considering the entire facts and circumstances of the case, it is seen that admittedly there is no prior notice or opportunity to the petitioner before issuing impugned notice dated 11.11.1994 by the second respondent nor there is anything on record even in the counter affidavit to the effect that the petitioner is party to such proceedings dated 30.10.1994. It is stated by the first respondent in the letter dated 15.12.1994 that the said proceedings do not belong to the petitioner. If that be so, there is no proper explanation forthcoming on

behalf of the respondents herein as to why and on what basis the impugned notice dated 11.11.1994 was issued. In the circumstances, the entire action on the part of the respondents is not proper apart from being arbitrary and violative of principles of natural justice.

The Writ Petition is accordingly, allowed setting aside the impugned order dated 30.10.1994 of the first respondent and notice dated 11.11.1994 of the second respondent. It is, however, open for the respondents to take action, as per law, after giving prior notice and opportunity to the petitioner and after conducting enquiry, if any. No costs.

23.09.2004

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice,

On this Thursday, the twenty third day of September, Two thousand and four.

Assistant Registrar.

COPY TO:

1 The Joint Collector, Nellore, Nellore dist.
2 The Mandal Revenue Officer, Chittamur Mandal, Nellore district.

3 Two CCs. to the G.P. for Revenue, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

4 Two CD copies.